

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DAVID C. JOHNSON,

Plaintiff,

v.

BANK OF AMERICA, N.A, et al.,

Defendants.

Case No. 2:15-cv-00652-JCM-PAL

ORDER

Presently before the court is defendant LendingClub Corporation's ("Lending") motion to dismiss. (Doc. # 11). Plaintiff's response was due by October 18, 2015. Plaintiff has not filed a response or sought an extension from the court.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (citing *Bell Atlantic*, 550 U.S. at 557). However, where there are well pled factual allegations, the court should assume their veracity and determine if they give rise to relief. *Id.* at 1950.

Pursuant to Local Rule 7-2, an opposing party must file points and authorities in response to a motion and failure to file a timely response constitutes the party's consent to the granting of the motion and is proper grounds for dismissal. *See* LR IB 7-2(d); *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the district court is required to weigh several factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring


1 disposition of cases of their merits; and (5) the availability of less drastic sanctions.” *Ghazali v.*
2 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.
3 1986)).

4 In light of plaintiff’s failure to respond and weighing the factors identified in *Ghazali*, the
5 court finds dismissal of plaintiff’s complaint against the moving defendant appropriate.

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant LendingClub
8 Corporation’s motion to dismiss complaint (doc. # 11) be, and the same hereby is, GRANTED.
9 Plaintiff’s complaint against LendingClub Corporation is DISMISSED.

10 DATED THIS 21st day of October, 2015.

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13 JAMES C. MAHAN
14 UNITED STATES DISTRICT JUDGE
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